

Study Session  
Selah City Council  
December 11, 2007

Mayor Pro Tem Allen Schmid called the Study Session to order, noting there are 2 items on the Agenda for Study: the 2008 Budget & the Comp Plan.

## 2008 BUDGET

Clerk/Treasurer Dale Novobielski called Council Members' attention to green sheets summarizing changes in the budget summary of funds. He noted the final page representing the Finance Committee's recommendations. The Committee recommends putting off exterior improvements to City Hall (\$17,358) as well as a sun shade at Carlon Park (\$5,000), improvements at McGonagle Park (\$14,000), the skateboard park (\$15,000), tennis court improvements (\$20,000) and Crusher Canyon Park improvements (\$10,000). He reported sales tax estimates have been increased by \$20,000, and part of the parks mower will be funded out of Fund 470. He concluded that as a result of these changes, the revised ending balance is \$151,031.

City Supervisor Frank Sweet reported that the Finance Committee discussed the possibility of going ahead with the skateboard park if a group such as Skateboarders came to the Council with funds.

The Mayor Pro Tem noted that the proposed cuts mean that the City will not repair tennis courts, the skate park is out and Crusher Canyon Park west of Lince School will not be done.

The City Supervisor said the priority wasn't as high on some of those projects. He noted the School District is relieved that they don't need to come up with \$8,000.

The Mayor Pro Tem asked if the high school will be able to hold tennis matches. He suggested Mr. Hagler get in contact with the General Manager of the Country Club to discuss the cost when they refurbished their tennis courts.

The Parks & Rec Director said his department will do some minor repairs.

Frank Sweet asked the Clerk/Treasurer to reinforce rate changes for utilities.

Finance Committee Member Scott Smeback stated what is in front of the Council is what members of the Finance Committee decided we could live without at this time.

Dale Novobielski stated that during the Council Meeting the Council will address proposed increases in water, sewer, and garbage rates. He stated water rates will increase by 60¢ for average winter usage.

Mayor Pro Tem Schmid asked what that will mean for summer usage.

The Clerk/Treasurer responded it would go up approximately \$1.80. He noted sewer customers will see their fees increase by 99¢ per month. He noted for solid waste the 60 gallon totter will go up 44¢ per month.

Councilman Herb Schmidt stated the increases amount to \$3.25 a month.

City Supervisor Frank Sweet stated the increase amounts to \$2.35 winter usage for the 3/4" meter.

The Mayor Pro Tem said the increase would amount to an average of \$3.23 a month for summer usage.

Councilman Elect John Tierney asked a question regarding sewer rates for multi-residential dwellings and multi-residential developments, noting that rates for the former are \$22.59 per month and the latter \$33.85.

The Clerk/Treasurer responded that the rates were in place when he came here eleven years ago. He stated that the Public Works Committee determined a higher density flat rate user's fee should be less.

Public Works Director Joe Henne said he had brought a letter from their consultant during last budget cycle explaining the rationale for those rates.

Councilman Smeback said we probably still have that report given by Engineer Jeff Louman or Ted Pooler.

City Supervisor Frank Sweet suggested the Public Works Committee can look at that in 2008. He called the Council's attention to the fact that the Salary Ordinance and Contracts are not in this packet. He said that way, incoming Council Members will have time to look at the contracts.

There being no further questions, the Mayor Pro Tem thanked the Clerk/Treasurer. He noted the next item on the Study Session is the Comprehensive Plan.

## COMP PLAN AMENDMENTS

Community Planner Dennis Davison explained that, as provided in statute, the Planning Commission reviews amendments to the Comp Plan once a year (generally in November) and brings those forward to the Council to be considered at a public meeting prior to the first of the year. He noted in case of an emergency, other areas of the state have considered changes at other times during the year. He turned the meeting over to Bob Noe, City Attorney.

Bob Noe noted he submitted a memo to the Council dealing with "major rezone" issues which, by Code need to come before Council after consideration by the Planning Commission. He enumerated points made in his memo, citing Selah Municipal Code 10.40.010, which provides:

"From time to time a change in circumstances or conditions may warrant a change in the zoning text or map created by this title. The purpose of this chapter is to establish the procedures to amend the zoning text and/or map when the proposed change would be consistent with the goals, objectives and policies of the comprehensive plan and intent of this title."

He said that is the purpose of it, when there is a change of circumstances or conditions that would dictate a change in the Comprehensive Plan or zoning, this would be the procedure that the Council would follow.

He noted that later the chapter refers to the decision as a "legislative" decision. He clarified that on the occasion that only one property owner would be affected by the change, the Council's role would be "adjudicatory." He further stated, Case law provides that rezones affecting a particular property owner may take on aspects of an adjudication and is, therefore, subject to the appearance of fairness doctrine."

He described the Comp Plan as a "map" against which proposed amendments are held and cited criteria provided for in SMC 10.40.050 as follow:

"The Planning Commission is charged with considering the following criteria when presented with a request for a Comprehensive Plan amendment with an associated rezone request and the City Council, on its review of the Planning Commission's recommendation, *must* also consider the following criterion provided for in SMC 10.40.050:

- (1) The extent to which the proposed amendment/major rezone is consistent with and/or deviates from the goals, objectives, mapping criteria and policies adopted in the comprehensive plan and the intent of this title;
- (2) The adequacy of public facilities, such as roads, sewer, water and other public services required to meet urban or rural needs;
- (3) The public need for the proposed change. Public need shall mean that a valid public purpose, for which the comprehensive plan and this title have been adopted, is served by the proposed application. Findings that address public need shall, at a minimum, document:
  - (A) Whether additional land for a particular purpose is required in consideration of the amount already provided by the plan map designation or current zoning district within the area as appropriate; and
  - (B) Whether the timing is appropriate to provide additional land for a particular use.
- (4) Whether substantial changes in circumstances exist to warrant an amendment to the current designation or zone;
- (5) The testimony at the public hearing;
- (6) The compatibility of the proposed zone change and associated uses with neighboring land uses;
- (7) The suitability of the property in question for uses permitted under the proposed zoning;
- (8) The recommendation from interested agencies and departments."

He noted the Council's review is a "closed record" review, limited to those things that were made a part of the record before the Planning Commission at their public hearing. The only things the Council can consider are those things the Planning Commission considered. The Council can affirm, modify, remand or reject the decision. He noted if change in the Comp Plan is made, it can be appealed in Superior Court.

He noted our Ordinance says there is no appeal, although there may be arguments under case law, because case law amplifies what our Code already says. He quoted his memo:

"Case Law Regarding Rezone.

With respect to a rezone request our Courts have uniformly held that the proponent must show a substantial change in circumstances to justify the rezone. "Generally the proponent of a rezone must show a substantial change in circumstances since the last zoning or amendment unless the proposed rezone implements policies of the comprehensive plan." Bjarnson v. Kitsap County, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995).

A variety of factors may indicate a substantial change in circumstances, including changes in public opinion, in local land use patterns, and on the property itself" Bjarnson, id. at 846-47.

This requirement exists unless the requested rezone is in furtherance of an already existing comprehensive plan designation. The Supreme Court has explained this distinction in the case Save Our Rural Environment v. Snohomish County, 99 Wn.2d 363; 662 P.2d 816 (1983) as follows:

The suggestion that the instant rezone may not be approved without substantial findings of changed circumstances does not seem applicable to the instant case. The action requested herein is a rezone which would implement an adopted comprehensive plan of Snohomish County. If such implementation were not allowed to occur until physical or developmental circumstances in the area had changed, the new comprehensive plan might never be fulfilled: if an area is presently undeveloped and a newly amended comprehensive plan calls for industrial development, no industrial development may occur until at least one industrial rezone has been granted. If that rezone cannot itself occur because land development patterns have not changed in the area, then the industrial development will most likely never have an opportunity to occur.

This case law derived requirement is consistent with the requirement found in the Selah Municipal Code at 10.40.050(4).

#### IV. Conclusion.

The City Council when presented with a request for Comprehensive Plan Amendment and an associated rezone request should review each of the criterion set forth in SMC 10.40.050 carefully.

The Council must also view the request in light of consistency with the Comprehensive Plan and amendments requirements. With respect to the rezone request, the proponent must demonstrate a substantial change in circumstances that would support the requested rezone."

and concluded that the court supports Comp Plan designations. He offered to entertain questions. Council Members took time to read Mr. Noe's memo.

The Mayor Pro Tem said what the City Attorney is saying is that we have a couple of things to keep in mind: whether the proposed change is keeping with the goals and objectives of the Comp Plan, and whether there has been a change in circumstances which necessitates a change in the Plan.

Councilman Harris noted that at some point in time, you have to let development happen or it will never happen.

Bob Noe cited a case in Snohomish County where the designation is consistent with the land use designation in the Comp Plan. That's the only exception where "change" is not a part of the requirement, if the surrounding area has taken on a pattern even though the Comp Plan may not reflect that kind of change.

Frank Sweet asked whether, in the example of Snohomish County, the owner came in and wanted it zoned commercial, would you have to change the Comp Plan. Mr. Noe responded that in order to change the Comp Plan, they would need to be able to show that those properties were not being used as industrial, but that the area is more commercial in nature.

The Mayor Pro Tem asked if there is no designation on a piece of property and there seems to be a potential for industrial activity, you could designate it that way.

Bob Noe stated that under a Comp Plan, all property has a land use designation.

The Mayor Pro Tem introduced Mr. Noe to the audience.

Councilman Schmidt said his assumption was that the Planning Commission had this information available when they made their designation.

Mr. Noe said the Planning Commission checked off all of the items under 10.40.050.

The City Supervisor noted what the Planning Commission didn't have was Mr. Noe's explanation of the criteria that should be considered.

Councilman Overby stated his concern about request of Southern Avenue, noting he wonders if it is appropriate to put this off a second time. He said if there were no litigation at work in this, we would already have a decision.

Bob Noe stated property owners there are urging the City to initiate a decision. He stated his agreement with Mr. Overby, saying he can see no reason why they can't hear it.

Frank Sweet said he's not sure that litigation needs to be considered for the Planning Commission to make a decision.

Councilman Overby expressed agreement that a lot of work went into this on the proponents' behalf, and it shouldn't be left hanging. He asked if the Council could remand the issue back to the Planning Commission.

Bob Noe said there has been recent discussion among staff regarding that, and they, too, have wondered why it hasn't been decided.

Mayor Pro Tem Schmid stated the Council needs to keep in mind when we deal with Comp Plan changes that in rezones and changes to the Plan that we now have some good information in front of us. He said it becomes very apparent that personal feelings can be eliminated in making such decisions if we use this information, so applicants can be treated equitably. He noted the guidelines are clear and issues can be addressed from that perspective. He concluded that as a City, we must follow these criteria so we don't get into situations like we got in on Southern Avenue.

Councilman Overby noted that people's opinions change, and public opinion can be considered a change.

At 3:45, the Mayor Pro Tem recessed the Study Session until the regular Council Meeting at 4pm.